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April 13, 2004
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Worker Appeal

Date of Filing: March 18, 2004

Case No.: TIA-0059

XXXXXXXX (the applicant or the worker) applied to the Office of Worker Advocacy of the Department of Energy (DOE) for DOE assistance in filing for state workers' compensation benefits. The applicant was a DOE contractor employee at a DOE facility. Based on a negative determination from an independent Physician Panel, the DOE Office of Worker Advocacy (OWA or Program Office) determined that the applicant was not eligible for the assistance program. The applicant appeals that determination. As explained below, the appeal should be denied.

I. Background

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the EEOICPA or the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385.

This case concerns Part D of the Act, which provides for a DOE program to assist Department of Energy contractor employees in filing for state workers' compensation benefits for illnesses caused by exposure to toxic substances at DOE facilities. 42 U.S.C. § 7385o. The DOE Office of Worker Advocacy is responsible for this program and has a web site that provides extensive information concerning the program. 1/

Part D establishes a DOE process through which independent physician panels consider whether exposure to toxic substances at DOE facilities caused, aggravated or contributed to employee illnesses. Generally, if a physician panel issues a determination favorable to

1/ See www.eh.doe.gov/advocacy.

the employee, the DOE Office of Worker Advocacy accepts the determination and instructs the contractor not to oppose the claim unless required by law to do so. The DOE has issued regulations to implement Part D of the Act. These regulations are referred to as the Physician Panel Rule. See 10 C.F.R. Part 852. As stated above, the DOE Office of Worker Advocacy is responsible for this program.

The Physician Panel Rule provides for an appeal process. As set out in Section 852.18, an applicant may request the DOE's Office of Hearings and Appeals (OHA) to review certain Program Office decisions. An applicant may appeal a decision by the Program Office not to submit an application to a Physician Panel, a negative determination by a Physician Panel that is accepted by the Program Office, and a final decision by the Program Office not to accept a Physician Panel determination in favor of an applicant. The instant appeal is filed pursuant to that Section. Specifically, the applicant seeks review of a negative determination by a Physician Panel that was accepted by the Program Office. 10 C.F.R. § 852.18(a)(2). See *Worker Appeal* (Case No. TIA-0025), 28 DOE ¶ 80,294 (2003).

In her application for DOE assistance in filing for state workers' compensation benefits, the applicant asserted that for a six-month period in 1944, she was a cafeteria worker at the DOE site in Hanford, Washington. Later, she was diagnosed with thyroid multinodular goiter.

2/ The applicant believes that exposure to sand that was present at the Hanford site and exposure to radiation-contaminated articles of clothing worn by Hanford workers caused this condition.

The Physician Panel issued a negative determination on this claim. The Panel found that the worker's illness did not arise "out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility." The Panel based this conclusion on the standard of whether it believed that "it was at least as likely as not that exposure to a toxic substance at a DOE facility during the course of the worker's employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the worker's illness or death."

2/ The earliest notation of an abnormality of the applicant's thyroid that appears in the record of this case was in 1974. Record at 120.

In considering the worker's disease, the Physician Panel unanimously found that "there was no known or documented toxicological exposure during [the applicant's] 6 months of employment as a cafeteria worker in 1944. [The applicant] cites sand, dishwashing detergents and cleaners as exposures of concern to her. However, there is no medical evidence in the literature linking these to the development of thyroid multinodular goiter."

II. Analysis

The applicant seeks review of the Panel's determination. First, she denies that she claimed that exposure to cleaning agents and dishwashing detergents caused her thyroid disease. She states that this was an interpretation by the individual who interviewed her regarding her work history. The applicant claimed it was therefore erroneous to include it in the material sent to the Panel.

Even if the Panel did consider a factor that was incorrectly included for evaluation, it does not constitute an error warranting remand in this case. Elimination of the cleaning agents from consideration would still not result in a favorable result for this applicant. It would just mean that there was one fewer reason upon which to base a positive determination for her. I fail to discern any prejudice to the applicant by the Panel's considering this issue. Accordingly, this objection does not constitute a basis for a remand.

The applicant also asserts that one of her claims, that she was exposed to workers' radiation-contaminated clothing, was not considered by the Panel. In this regard, she states that she picked up workers' contaminated clothing as part of her job. It is true that the Panel did not specifically refer to this issue. However, this does not mean that the Panel did not give consideration to this matter. One of the Panel's conclusions was that "Exposure evidence is lacking in this case." The Panel also stated that "a job exposure matrix was done and food service workers were noted to have no exposures of concern." See Record at 227. These conclusions implicitly cover the applicant's claim that she was exposed to toxic materials through contact with workers' contaminated clothing. See *Worker Appeal* (Case No. TIA-0038), 28 DOE ¶ _____ (March 11, 2004). She has not provided any information refuting the Panel's statement that cafeteria workers did not suffer any "exposures of concern." She has not supported her contention that she did in fact pick up contaminated clothing or even came into contact with it. The applicant's assertions alone are insufficient in this regard. I therefore see no basis for remanding this matter for a specific

determination as to whether exposure to workers' clothing could have caused the applicant's thyroid disease.

The applicant further contends that radioactive material entered her system through the air and through sand storms. She refers in a general way to articles that she has read regarding the release of radioactive materials into the air during 1944. She has not provided copies of these articles. Thus, there is simply no evidence upon which I can conclude that the Panel made any error. In fact, the applicant has not provided any information to indicate that the Panel's determination was incorrect. For example, she has not submitted any medical or scientific literature indicating that Hanford cafeteria workers were exposed to toxic materials in any way, either by the air, sand or through exposure to workers' clothing. The applicant has not pointed to any data in the record either contradicting the Panel's determination or suggesting that the Panel's overall decision was in error.

In sum, the applicant's beliefs, with nothing more, are not convincing. They do not establish any deficiency or error in the Panel's determination. Because the applicant has not identified a deficiency or error in the Panel's determination, there is no basis for an order remanding the matter to OWA for a second Panel determination. Accordingly, the appeal should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0059 be, and hereby is, denied.
- (2) This is a final Order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: April 13, 2004